

FOURTH EXTENSION OF [SEQ CHAPTER \h \r 1]TOLLING AGREEMENT FOR CLAIMS
UNDER CERCLA RELATING TO THE NELSON TUNNEL/
COMMODORE WASTE ROCK PILE SUPERFUND SITE

The United States, on behalf of the United States Environmental Protection Agency, and Pioneer Natural Resource USA, Inc., and Pioneer Natural Resources Company (“Potential Defendants”), each a “Party” (and collectively the “Parties”) enter into this Fourth Extension of Tolling Agreement (“Tolling Agreement”) to facilitate settlement negotiations between the Parties with respect to potential cost recovery claims arising under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9607(a), for costs incurred in responding to releases at the Nelson Tunnel/Commodore Waste Rock Pile Superfund Site near Creede, Colorado in the Willow Creek watershed in Mineral County, Colorado (the “Tolled Claims”), without thereby altering the claims or defenses available to any Party hereto, except as specifically provided herein.

The Parties, in consideration of the covenants set out herein, agree as follows:

1. Notwithstanding any other provision of this Tolling Agreement, the period commencing on May 15, 2013, and ending on April 14, 2016, inclusive (the “Tolling Period”), shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States on the Tolled Claims.

2. Any defenses of laches, estoppel, or waiver, or other similar equitable defenses based upon the running or expiration of any time period shall not include the Tolling Period for the Tolled Claims.

3. Potential Defendants shall not assert, plead, or raise against the United States in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.

4. This Tolling Agreement does not constitute any admission or acknowledgement of any fact, conclusion of law, or liability by any Party to this Tolling Agreement. Nor does this Tolling Agreement constitute any admission or acknowledgment on the part of the United States that any statute of limitations, or similar defense concerning the timeliness of commencing a civil action, is applicable to the Tolled Claims. The United States reserves the right to assert that no statute of limitations applies to any of the Tolled Claims and that no other defense based upon the timeliness of commencing a civil action is applicable.

5. This Tolling Agreement may not be modified except in a writing signed by all the Parties. The Parties acknowledge that this Tolling Agreement may be extended for such period of time as the Parties agree to in writing.

6. It is understood that the United States may terminate settlement negotiations and commence suit at any time, upon provision of written notice by mail to Potential Defendants. Where the United States elects to terminate negotiations under this Paragraph, the Tolling Period

shall continue for the duration set forth in Paragraph 1. Nothing herein shall preclude the commencement of any action by the United States to protect the public health, welfare, or the environment without provision of advance notice.

7. This Tolling Agreement does not limit in any way the nature or scope of any claims that could be brought by the United States in a complaint against Potential Defendants or the date on which the United States may file such a complaint, except as expressly stated herein.

8. This Agreement is not intended to affect any claims by or against third parties.

9. Potential Defendants shall preserve and maintain, during the pendency of the Tolling Period, and for a minimum of 90 days after termination of the Tolling Period, at least one legible copy of all documents and other materials subject to discovery under the Federal Rules of Civil Procedure and relating to the Tolerated Claims, regardless of any corporate or document retention policy to the contrary.

10. This Tolling Agreement is effective upon execution by the Potential Defendants, and without the requirement of filing with the Court, and may be signed in counterparts.

11. This Tolling Agreement contains the entire agreement between the Parties, and no statement, promise, or inducement made by any Party to this Tolling Agreement that is not set forth in this Tolling Agreement shall be valid or binding, nor shall it be used in construing the terms of this Tolling Agreement as set forth herein.

12. The undersigned representative of each of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Tolling Agreement and to legally bind such party to all terms and conditions of this document. This Agreement shall be binding upon the United States, acting on behalf of the United States Environmental Protection Agency and upon Potential Defendants and their successors.

SIGNATURES

The United States, on behalf of the United States Environmental Protection Agency, consents to the terms and conditions of this Tolling Agreement by its duly authorized representatives on this ____ day of September, 2015.

Robert D. Brook
Assistant Section Chief
Environmental Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice

Jerel L. Ellington
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice

Pioneer Natural Resources USA, Inc. and Pioneer Natural Resources Company consent to the terms and conditions of this Tolling Agreement by its duly authorized representative on this ____ day of April, 2015.

By: _____